

JAMES R. RAGSDALE  
ANDREA J. OLIVER

IBLA 94! 343

Decided December 31, 1996

Appeal from a decision of the California State Office, Bureau of Land Management, declaring mining claims abandoned and void for failure to pay rental fees. CAMC! 39780, et al.

Appeal dismissed in part; BLM decision reversed in part.

1. Mining Claims: Abandonment! ! Mining Claims: Rental or Claim Maintenance Fees: Generally

Under the Department of the Interior and Related encies Appropriations Act for Fiscal Year 1993, P.L. 102! 381, 106 Stat. 1378-79 (1992), and its implementing regulations, a miner holding 10 or fewer mining claims, and meeting certain conditions, was entitled to seek a rental fee exemption for one or more of those claims and submit rental fees for any remaining claims.

APPEARANCES: James R. Ragsdale and Andrea J. Oliver, Yreka, California, pro sese.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

James R. Ragsdale and Andrea J. Oliver, husband and wife, have appealed from a decision of the California State Office, Bureau of Land Management (BLM), dated February 2, 1994, declaring eight mining claims abandoned and void for failure to pay rental fees for the 1993 and 1994 assessment years, on or before August 31, 1993, as required by the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993 (Act), P.L. 102! 381, 106 Stat. 1378! 79 (1992), and its implementing regulations (43 CFR 3833.1! 5 through 3833.1! 7 (1993)). Those claims are the Geanie (CAMC! 39780), Lucky Lode (CAMC-39910), Timber Gulch (CAMC! 39915), Welcome II (CAMC-39916), Goat (CAMC! 40274), Dowling Gulch (CAMC! 57684), R & R (CAMC! 76460), and J & J (CAMC! 76461). By order dated April 22, 1994, we stayed the effect of BLM's decision pending a resolution of the appeal.

Of the eight claims listed in the decision, only six are at issue in this appeal. The record shows that neither Ragsdale nor Oliver is an owner

of the Welcome II claim (CAMC-39916) and they claim no interest. In addition, in their statement of reasons for appeal (SOR), appellants state: "A decision declaring the Lucky Lode claim CAMC 39914 abandoned and void could be issued to us" (SOR at 3). Since such a decision has been issued, we consider appellants' statement as a withdrawal of their appeal as to the Lucky Lode claim, and their appeal is dismissed to that extent.

The six claims at issue are located in sec. 6, T. 45 N., R. 7 W., Mount Diablo Meridian, Siskiyou County, California, at the confluence of Dowling Gulch and Humbug Creek within the Klamath National Forest. One of the claims, the Timber Gulch (CAMC-39915) may have previously been declared null and void by BLM. <sup>1/</sup>

On October 5, 1992, Congress passed the Act, a provision of which established that

for each unpatented mining claim, mill or tunnel site on federally owned lands, in lieu of the assessment work requirements contained in the Mining Law of 1872 (30 U.S.C. 281-28e), and the filing requirements contained in section 314(a) and (c) of the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1744 (a) and (c)), each claimant shall, except as provided otherwise by this Act, pay a claim rental fee of \$100 to the Secretary of the Interior or his designee on or before August 31, 1993 in order for the claimant to hold such unpatented mining claim, mill or tunnel site for the assessment year ending at noon on September 1, 1993 \* \* \*.

106 Stat. 1378. The Act also contained an identical provision establishing rental fees for the assessment year ending at noon on September 1, 1994,

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<sup>1/</sup> James R. and Sammy B. Ragsdale located a placer mining claim identified as the Timber Gulch Relocation on Mar. 20, 1972, and James R. Ragsdale filed that claim for recordation with BLM on Oct. 4, 1979, in accordance with section 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1994). BLM assigned that claim recordation number CAMC-39915. Thereafter, in the case record and in the decision that is the subject of this appeal that claim is identified as the Timber Gulch claim. In a decision dated June 11, 1975, this Board affirmed a Jan. 17, 1975, decision of the California State Office, BLM, declaring three placer mining claims null and void. United States v. Ragsdale, 20 IBLA 348 (1975). The decision identified those claims as the "Timber Gulch Placer Mining Claim a/k/a Timber Gulch a/k/a Timber Line Gulch; Timber Gulch No. 2 Placer Mining Claim a/k/a Timber Line Gulch; and Timber Gulch Relocation Placer Mining Claim, all located in section 6, T. 45 N., R. 7 W., Mount Diablo Meridian." Id. at 349 n.1. If the Ragsdale decision addressed the Timber Gulch claim (CAMC-39915) at issue in this case, that claim was not properly recorded with BLM in 1979. BLM should determine that fact upon return of the case file to it.

requiring payment of an additional \$100 rental fee on or before August 31, 1993. 106 Stat. 1378! 79.

Congress further mandated that "failure to make the annual payment of the claim rental fee as required by this Act shall conclusively constitute an abandonment of the unpatented mining claim, mill or tunnel site by the claimant \* \* \*." 106 Stat. 1379.

Implementing Departmental regulations provided as follows:

Mining claim or site located on or before October 5, 1992. A nonrefundable rental fee of \$100.00 for each mining claim, mill site, or tunnel site, shall be paid on or before August 31, 1993, for each of the assessment years beginning on September 1, 1992, and September 1, 1993, or a combined rental fee of \$200.

43 CFR 3833.1! 5(b) (1993). 2/

The only exemption provided from this annual rental requirement was the so-called small miner's exemption, available to claimants holding 10 or fewer mining claims, mill sites, and tunnel sites on Federal lands who meet all the conditions set forth in 43 CFR 3833.1-6(a) (1993). William B. Wray, 129 IBLA 173 (1994). 3/ If a claimant chose not to pay the rental fees and instead to seek an exemption, the regulations required the filing, on or before August 31, 1993, of a "separate statement \* \* \* supporting the claimed exemption for each assessment year [it] is claimed" (43 CFR 3833.1! 7(d) (1993)). Failure to pay the rental fee or file the required small miner's exemption documents within the prescribed time period "shall be deemed conclusively to constitute an abandonment of the mining claim \* \* \*, which shall be void." 43 CFR 3833.4(a)(2)(1993).

In the present case, appellants sought to comply with the requirements of the Act and its implementing regulations by filing with BLM on August 30, 1993, separate certifications of exemption from fees, signed by both of them, for the 1993 and 1994 assessment years. On each form they listed the six claims for which an exemption was sought: Geanie, Timber Gulch, Goat, Dowling Gulch, R & R, and J & J. On the same day, they also paid \$200 in rental fees for the Welcome placer mining claim (CAMC! 39910) for the 1993 and 1994 assessment years.

In its February 1994 decision, BLM declared the claims at issue here abandoned and void, stating:

An interpretation of the Act of October 5, 1992, as printed in the Preamble of the Federal Register, dated July 15, 1993, (FR

2/ Appellants' claims were all located before Oct. 5, 1992.

3/ One of those conditions was that the claims for which a small miner's exemption was sought were required to be under "[o]ne or more Notices or approved Plans of Operations \* \* \*." 43 CFR 3833.1-6(a)(4)(i)(1993).

Vol. 58 No. 134, page 38193) states, "Because the language of the Act only allows for a choice between either paying the fee or doing the assessment work and meeting the filing requirements '...on such ten or fewer claims,' a claimant may not pay the fees for a portion of his or her ten or fewer claims and take the exemption on the remaining portion." (emphasis added)

Since the rental fees for the 1993 and the 1994 assessment years have been paid on the Welcome placer (CAMC 39910)[, it] has been updated through the 1994 assessment year. [Emphasis in original.]

(Decision at 2).

[1] In a recent case, Richard W. Taylor, 136 IBLA 299 (1996), this Board addressed the issue of whether a claimant holding 10 or fewer claims could file and qualify for an exemption for some of those claims and pay rental fees for others. In that case, the appellants filed exemption certificates on August 30, 1993, for four claims and at the same time paid rental fees for two of the same claims. In its decision, BLM stated that the appellants had an approved plan of operations for two of the claims, but not for the other two for which fees had been paid. BLM denied the small miner's exemption because the appellants did not have all their claims under a plan of operations and declared the two claims for which fees had not been paid abandoned and void for failure to pay the fees.

The Board reversed BLM's decision concluding that a mining claimant may seek and obtain a small miner's exemption for claims under an approved plan of operations and also pay rental fees for other claims not covered by a plan. In reaching that conclusion, the Board stated that it found nothing in the Act that prevented a claimant holding 10 or fewer claims from paying rental on some of those claims and seeking an exemption for the others. It noted that the Act did not mandate that a claimant had to hold all claims as a group and cited the practical reason that a claimant might hold claims located "miles apart or even in another state." Richard W. Taylor, 136 IBLA at 303 n.2. The Board's rationale in Taylor controls the result in the present case. We reverse BLM's decision.

We recognize that the preamble language quoted above and relied on by BLM in this case and in Taylor would dictate a different result; however, a regulatory preamble, by itself, does not have the force and effect of law. Ohio Manufacturers' Association v. City of Akron, 628 F. Supp. 623, 634 (N.D. Ohio 1986), rev'd on other grounds, 801 F.2d 824 (6th Cir. 1986), cert. denied, 484 U.S. 801 (1987) (citing Chrysler Corp. v. Brown, 441 U.S. 281, 315! 16 (1979)). While a regulatory preamble may be used to interpret an ambiguous regulation, it cannot derogate the plain words of the regulations or enlarge their meaning. See Ronald Valmonte, 87 IBLA 197, 201 (1985). "Regulatory preambles \* \* \* may be useful aids in the interpretation of an ambiguous regulation, but they cannot supplant the regulation,

itself. In other words, we cannot say that the regulation says what it does not say or proscribes what it does not, in fact, prohibit." Id. at 201.

In Taylor at 136 IBLA at 302-03, we examined a number of the rental fee regulations and concluded:

BLM could have incorporated its understanding of the statute [as set out in the preamble] into the promulgated regulations. As discussed above, several provisions of the regulations indicate that it did not, but instead understood that there would be cases in which claimants would obtain a small miner's exemption for less than all of their claims.

Accordingly, nothing in the Act or the regulations promulgated to implement the Act precluded a claimant from seeking a small miner's exemption for some of the 10 or fewer claims and paying the rental fees for the remainder. BLM improperly declared the claims at issue abandoned and void for failure to pay timely rental fees. Whether or not appellants, in fact, qualify for a small miner's exemption may be determined by BLM upon return of the case file.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, appellants' appeal is dismissed to the extent it concerns "The Lucky Lode" lode mining claim, and the BLM decision appealed from is reversed to the extent it declared the Geanie, Timber Gulch, Goat, Dowling Gulch, R & R, and J & J placer mining claims abandoned and void for failure to pay rental fees.

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Bruce R. Harris  
Deputy Chief Administrative Judge

I concur.

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James L. Bymes  
Chief Administrative Judge

